

ITG News
Keeping First Nations Informed

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Message From The Director

We recently completed our initial Consultation Listening meeting, which was held on November 30th in Anchorage. I want to thank all of the participants, who provided input on pending federal tax issues, and discussed various concerns involving federal tax administration. This meeting was part of our commitment to meet at least once every three years with interested tribal leadership in each of the 12 BIA regions.

We have scheduled the next Consultation Listening meeting in conjunction with the United South and Eastern Tribes (USET) as part of their Impact Week meeting. The specific date and location for this meeting is:

Tuesday February 7th - 11:00 AM - 1:00 PM
Crystal Gateway Marriott
1700 Jefferson Davis Highway
Arlington, Virginia 22202

Those who are unable to attend this meeting can participate in similar meetings to be held in other areas of the country, which will be announced in future issues of ITG News and on our web site. In addition, tribal representatives can submit written input or inquiries at any time through the e-mail link on the bottom of our Consultation web page, or by writing to me at:

Internal Revenue Service
SE:T:GE:ITG

1111 Constitution Avenue NW
Washington, DC. 20224.

In addition to the Listening meetings, an Indian Tribe or group of Indian Tribes may invoke consultation on any issue or IRS action that may impact, or is impacting them. A Tribe may also request consultation where it desires to seek the input of the IRS on the potential federal tax consequences of economic opportunities, local laws, agreements, or similar matters that may affect, or be of interest to, the Indian Tribe. All such requests may be submitted at any time via e-mail to tege.itg.consultation@irs.gov.

As always, if you would like to discuss any issue, please feel free to contact me at Christie.Jacobs@irs.gov, or via telephone at (202) 283-9800.

Christie Jacobs

Introducing Form 944 – Employer's Annual Federal Tax Return

To reduce the burden on small employers, the IRS has simplified the rules for filing employment tax returns. Starting with calendar year 2006, certain employers will need to file new Form 944, Employer's Annual Federal Tax Return, instead of Form 941, Employer's Quarterly Federal Tax Return. Form 944 must be filed by employers whose liability for social security, Medicare and withheld federal income taxes for the calendar year is \$1,000 or less, unless:

- You file Form 941 electronically,
- You expect to pay annual wages totaling more than \$4,000,
- You expect your annual liability for social security, Medicare, and withheld federal income taxes to be more than \$1,000,
- You have only farm employees (required to file Form 943, *Employer's Annual Tax Return for Agricultural Employees*) or
- You have only household employees (required to file Form 942, *Employer's Quarterly Tax Return for Household Employees*.)

The IRS will directly notify employers who are required to file Form 944. If you believe you are eligible, but are not notified, you can contact the IRS at 1-800-829-0115 to determine your eligibility. Do NOT file Form 944 unless directed to do so by the IRS.

We will be posting links to the new Form 944 and instructions on our web site at www.irs.gov/tribes. In addition, we will be updating Publication 4268, Employment Tax Desk Guide for Indian Tribal Governments, to include specific information on this new form. As always, you can also contact your local ITG Specialist if you have any questions concerning this new provision.

Employee Tip Income Program Questions

ITG has a full-time Tip Coordinator to assist you with any questions about tip reporting agreements. If you are interested in securing a Tip Agreement, have questions concerning your existing agreement, or have received a notice about tip reporting responsibilities that is unclear, please contact Julie Reese at (303) 231-5250, ext. 236.

Reporting Abuses/Schemes

We continue to work with tribes and tribal officials to address financial abuses and schemes being promoted in Indian country. Working together can help ensure the integrity of tribal finances, and eliminate the threats posed by individuals with schemes that appear "too good to be true" and often are. If you are aware of financial impropriety, or of a promoter advocating a scheme that appears highly suspect, you can contact the ITG Abuse Detection and Prevention Team at (716) 686-4860, or via e-mail at tege.itg.schemes@irs.gov

Publication 4268-Employment Tax Guide for Tribes

Our on-line Employment Tax Guide continues to receive a very positive response from tribal payroll and finance employees. You can download this comprehensive guide from a link on our landing page at www.irs.gov/tribes

Customer Satisfaction Survey Results Published

The Office of Indian Tribal Governments recently completed its third annual customer survey obtaining feedback from our customers that will allow us to measure customer satisfaction with our products and services and to determine areas where we need to effect operational changes.

We want to thank everyone who participated. We received input from 187 of the 564 federally recognized Tribes, representing a 33% response rate. This was a slight decrease from 2004 but is a major improvement from the initial survey completed in 2003. While the overall level of satisfaction is a key measure, ITG tabulates the responses to each question and analyzes them by subject area and the geographic location of the respondents. The following chart provides a general summary:

Level of Burden on Tribes/ Delivery of Information to Tribes:

Eastern/Oklahoma Area

Satisfied 69%

Neutral 23%

Dissatisfied 7%

Great Plains/Great Lakes Area

Satisfied 75%

Neutral 16%

Dissatisfied 9%

Southwest Area

Satisfied 64%

Neutral 18%

Dissatisfied 18%

California/Nevada Area

Satisfied 71%

Neutral 20%

Dissatisfied 10%

Pacific Northwest Area

Satisfied 59%

Neutral 32%

Dissatisfied 8%

Alaska Area

Satisfied 58%

Neutral 34%

Dissatisfied 8%

Proper Collaboration with Tribes:

Eastern/Oklahoma Area

Satisfied 64%

Neutral 26%

Dissatisfied 10%

Great Plains/Great Lakes Area

Satisfied 65%

Neutral 33%

Dissatisfied 2%

Southwest Area

Satisfied 46%

Neutral 23%

Dissatisfied 30%

California/Nevada Area

Satisfied 64%

Neutral 23%

Dissatisfied 13%

Pacific Northwest Area

Satisfied 45%

Neutral 45%

Dissatisfied 10%

Alaska Area

Satisfied 50%

Neutral 37%

Dissatisfied 13%

Adherence to Proper Protocol/All Tribes Treated Equally:

Eastern/Oklahoma Area

Satisfied 70%

Neutral 24%

Dissatisfied 6%

Great Plains/Great Lakes Area

Satisfied 71%

Neutral 27%

Dissatisfied 3%

Southwest Area

Satisfied 63%

Neutral 29%

Dissatisfied 9%

California/Nevada Area

Satisfied 71%

Neutral 28%

Dissatisfied 1%

Pacific Northwest Area

Satisfied 49%

Neutral 48%

Dissatisfied 3%

Alaska Area

Satisfied 53%

Neutral 44%

Dissatisfied 3%

Recognition of Tribal Status and Sovereignty Issues:

Eastern/Oklahoma Area

Satisfied 77%

Neutral 13%

Dissatisfied 10%

Great Plains/Great Lakes Area

Satisfied 82%

Neutral 13%

Dissatisfied 5%

Southwest Area

Satisfied 63%

Neutral 20%

Dissatisfied 18%

California/Nevada Area

Satisfied 73%

Neutral 23%

Dissatisfied 5%

Pacific Northwest Area

Satisfied 62%

Neutral 34%

Dissatisfied 3%

Alaska Area

Satisfied 53%

Neutral 40%

Dissatisfied 8%

Accuracy/Timeliness/Honesty in IRS Actions:

Eastern/Oklahoma Area

Satisfied 58%

Neutral 33%

Dissatisfied 9%

Great Plains/Great Lakes Area

Satisfied 50%

Neutral 47%

Dissatisfied 3%

Southwest Area

Satisfied 52%

Neutral 36%

Dissatisfied 13%

California/Nevada Area

Satisfied 71%

Neutral 23%

Dissatisfied 5%

Pacific Northwest Area

Satisfied 48%

Neutral 43%

Dissatisfied 10%

Alaska Area

Satisfied 46%

Neutral 45%

Dissatisfied 9%

Overall Level of Satisfaction:

Eastern/Oklahoma Area

Satisfied 78%

Neutral 17%

Dissatisfied 4%

Great Plains/Great Lakes Area

Satisfied 87%

Neutral 7%

Dissatisfied 7%

Southwest Area

Satisfied 71%

Neutral 14%

Dissatisfied 14%

California/Nevada Area

Satisfied 82%

Neutral 15%

Dissatisfied 3%

Pacific Northwest Area

Satisfied 68%

Neutral 24%

Dissatisfied 8%

Alaska Area

Satisfied 60%

Neutral 36%

Dissatisfied 4%

A report on the survey is posted to our web site at www.irs.gov/tribes. The Office of Indian Tribal Governments will be developing and implementing actions to effect improvements with a particular focus on Collaboration and Timeliness concerns expressed by respondents. We look forward to input at the ongoing Consultation Listening meetings (see Message From the Director) to further assist in determining improvements.

Reporting Employee Theft and Embezzlement

Unfortunately, all businesses and governmental entities can be victimized by employee theft and embezzlement. While most Tribes have enacted a system of internal controls that significantly minimizes the risk, virtually everyone has encountered this issue.

In most cases, the offending employee is terminated by the Tribe. In some cases, the Tribe may attempt to recover the stolen funds through tribal court action, or by referral to local, state, or federal authorities for possible prosecution or issuance of a judgment. This is not always possible, since the amount may be insufficient to warrant legal action, or since the employee may have fled the area.

The Office of Indian Tribal Governments is interested in these types of cases, since monies illegally obtained through theft or embezzlement are subject to federal taxation. Whether the offending individual is prosecuted or not, we can tax their illegally obtained gain, meaning that they will never completely “get away” with their criminal activity.

If you encounter a theft or embezzlement perpetrated by an employee, please provide us with the specific information by contacting us at tege.itg.schemes@irs.gov, or calling Randy Johnson at (405) 297-4407.

IRS to Accept Facsimile Signatures on Employment Tax Returns

The Internal Revenue Service has issued new rules allowing corporate officers or duly authorized agents to sign employment tax forms by facsimile, including alternative signature methods such as computer software programs or mechanical devices.

The rules, outlined in Revenue Procedure 2005-39, will reduce burden on business taxpayers by simplifying employment tax filing and lowering the number of returns rejected by the IRS because of signature issues.

Rev. Proc. 2005-39 applies to the following forms:

Any form in the 940 series, including Form 940, Employer's Annual Federal Unemployment Tax Return (FUTA); Form 941, Employer's Quarterly Federal Tax Return; Form 943, Employers Annual Federal Tax Return for Agricultural Employees; and Form 945, Annual Return of Withholding Federal Income Tax; Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons;

Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips;

Form CT-1, Employer's Annual Railroad Retirement Tax Return; and

Any variant of these forms, such as Form 941-C, Statement to Correct Information; Form 941-SS, Employer's Quarterly Federal Tax Return.

EMPLOYMENT TAXES, INCOME TAXES AND UNDOCUMENTED ALIEN EMPLOYEES

We hear in the news that there may be 20 Million or more undocumented aliens in the United States. These aliens are working in many different types of occupations and industries. They work in agriculture, construction, child care, docks, elder care, factories, fishing, hotel and restaurant, janitorial, landscaping, retail sales, etc. Many are known to their employers as being legally ineligible to hire, and may use counterfeit identification and social security cards to gain employment.

The Internal Revenue Service knows that employers will continue to hire illegal alien workers for various reasons. Under the tax law, the employer is responsible for proper withholding of employment taxes. Some employers try to evade the payment of employment taxes by paying the illegal employees in cash or by check with a notation that the payment was for something other than wages, such as goods or services, in order to claim the expense. Employers may assume that because the worker is an illegal alien that the worker will not file a tax return and will remain under the radar of the IRS. Penalties for failure to properly withhold may be very costly to the employer. It is best to withhold the correct amount and remit the payments in a timely manner.

It is true that many illegal aliens never will file an income tax return; however, some do come forward and file. The Internal Revenue Service must encourage these workers to file. There are many reasons why an alien should file other than that it is required by law. Many aliens are owed refunds for tax paid to the Government. These refunds may be obtained even if the alien used a Social Security Number that does not belong to him or her. A tax return may be correctly filed by the taxpayer indicating that the SSN indicated on the Form W-2 was incorrect. A taxpayer who is ineligible to receive a Social Security Number may apply for an ITIN (Individual Taxpayer Identification Number). An ITIN may

be needed in order for the alien to open a bank account in the United States. Aliens in illegal status may have children that are U.S. citizens. An alien in illegal status may be married to a U.S. citizen, or to a legal resident alien. An alien in illegal status would need to have a filing history in order to have their status changed to a legal status. Many of the proposed legislative bills on Immigration Reform, if passed, may require the alien to have a history of tax law compliance.

If an employer has an employee that is ineligible for a Social Security Number, how can the employer remit the proper employment taxes? The employer should attach an affidavit to their 941 return stating that the employee is ineligible for a Social Security Number, give the employee's name, state the employee's wages, and withheld tax amounts as if the employee were single with no dependants, and remit the tax with their 941 return. The employer should keep a copy of the 941 return, copy of affidavit, and copy of checks for the remittance of taxes on behalf of the alien(s). It is possible for the employer to issue a Form W-2 to an employee indicating in the box for Social Security Number, "NONE". Corrected W-2C forms may also be filed.

The undocumented alien employee can file a tax return; however, he must apply for ITINs for himself, his or her spouse, and dependants by attaching Forms W-7 to the tax return for each individual. Please reference Publication 1915 "Understanding Your IRS Individual Identification Number (ITIN)". For more information on these issues, please contact Marc Salvatore of Indian Tribal Governments at (518) 427-5447.

SEASONAL WORKER VISAS AND THE U.S. DEPT OF LABOR

Recent compliance checks and examinations have indicated the use of undocumented seasonal workers by some employers. In an effort to increase compliance with Federal Law, we would like to provide a brief explanation of temporary or seasonal visas, and the U.S. Department of Labor Employment & Training Administration web sites for further information.

For those employers in need of seasonal workers for harvesting or other field work who can not find sufficient U.S. workers, the visa to apply for is H-2A Certification, otherwise know as Agricultural Labor. An employer, for example that grows blueberries, would apply for H-2A Certification in order to hire seasonal foreign laborers for harvesting. If an employer needed to hire employees that are citizens of Canada or Mexico, etc., please see www.ows.doleta.gov/foreign/h-2a.asp

This web site explains the New H-2A On-Line Application Processing System in order to obtain H-2A Certification for Temporary or Seasonal Agricultural Work. This site explains Qualifying Criteria, Process for Filing, Appeals of Notices of Nonacceptance, and Forms & Instructions. You can visit

www.ows.doleta.gov/foreign/contacts.asp to obtain forms.

For those employers in need of seasonal or temporary nonagricultural employees who can not find sufficient U.S. workers, the visa to apply for is H-2B Certification for Temporary Nonagricultural Work. For example, these workers are considered factory workers or non-field type workers such as those packing fruits and vegetables or making pallets. Please refer to www.ows.doleta.gov/foreign. This web site explains the H2-B qualifying criteria, process for filing and how to obtain Forms & Instructions. For further information call 1-877-US-2JOBS

Information can also be found in Internal Revenue Service Publication 51 (Circular A), Agricultural Employer's Tax Guide.

Federal Tax Calendar for First Quarter 2006

January 2006

Sunday, January 1 - Stop advance payments of EITC for any employee not filing a new Form W-5

Thursday, January 5 - * make a deposit for 12/28-12/30

Friday, January 6 - * make a deposit for 12/31-1/3

Tuesday, January 10 - Employees report December tip income to employers if \$20 or more

Wednesday, January 11 - * make a deposit for 1/4-1/6

Friday, January 13 - * make a deposit for 1/7-1/10

Tuesday, January 17 - ** Make a deposit for December if under the monthly deposit rule

Thursday, January 19 - * make a deposit for 1/11-1/13

Friday, January 20 - * make a deposit for 1/14-1/17

Wednesday, January 25 - * make a deposit for 1/18-1/20

Friday, January 27 - * make a deposit for 1/21-1/24

Tuesday, January 31 - Give employees copies of their Forms W-2 for 2004, and give annual information statements (Forms 1099, 1098, 5498, and W-2G) to all recipients of reportable payments

February 2006

Wednesday, February 1 - * make a deposit for 1/25-1/27

Friday, February 3 - * make a deposit for 1/28-1/31

Wednesday, February 8 - * make a deposit for 2/1-2/3

Friday, February 10 - * make a deposit for 2/4-2/7

Employees report January tip income to employers if \$20 or more

Wednesday, February 15 - * make a deposit for 2/8-2/10

** Make a deposit for January if under the monthly deposit rule

Friday, February 17 - * make a deposit for 2/11-2/14

Thursday, February 23 - * make a deposit for 2/15-2/17

Friday, February 24 - * make a deposit for 2/18-2/21

Tuesday, February 28 - File W-3/W-2s with SSA; file 1096/1099s and 1096/W-2Gs with IRS

March 2006

Wednesday, March 1 - *make a deposit for 2/22-2/24

Friday, March 3 - * make a deposit for 2/25-2/28

Wednesday, March 8 – 3/1-3/3

Friday, March 10 - *make a deposit for 3/4-3/7

Employees report February tip income to employers if \$20 or more

Wednesday, March 15 - *make a deposit for 3/8-3/10

**Make a deposit for February if under the monthly deposit rule

Friday, March 17 - *make a deposit for 3/11-3/14

Wednesday, March 22 - *make a deposit for 3/15-3/17

Friday, March 24 - *make a deposit for 3/18-3/21

Wednesday, March 29 - *make a deposit for 3/22-3/24

Friday, March 31 - *make a deposit for 3/25-3/28

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

** = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

Return Filing Dates

January 3rd

File Form 730 and pay the tax on applicable wagers accepted during November.

January 31st

File Form 941 for the 4th quarter of 2005. If all deposits paid on time and in full, file by February 10th.

File Form 940 for 2005 if liable for Federal Unemployment Tax (not participating or current with state unemployment tax). If all deposits paid on time and in full, file by February 10th.

File Form 730 and pay the tax on applicable wagers accepted during December.

File Form 945 for 2005. If all deposits paid on time and in full, file by February 10th.

File Form 943 for 2005 (agricultural entities). If all deposits paid on time and in full, file by February 10th.

February 28th

File information returns for all payments reported to recipients on Forms 1099, 1098, 5498, and W-2G using Form 1096 as a transmittal. If filing these forms electronically, file by March 31st.

File Form W-3 along with copy A of Forms W-2 you issued for 2005. File by March 31st if filing electronically.

File Form 730 and pay the tax on applicable wagers accepted during January.

File Form 8027 if you are a large food and beverage establishment. File by March 31st if filing electronically.

March 31st

File Form 730 and pay the tax on applicable wagers accepted during February.